

ORIGINAL

OPEN MEETING ITEM

9/7/06



0000061139

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

615

ARIZONA CORPORATION COMMISSION

MEMORANDUM

Arizona Corporation Commission

DOCKETED

AUG 25 2006

DOCKETED BY

NR

AZ CORP COMMISSION
DOCUMENT CONTROL

2006 AUG 25 P 2:41

RECEIVED

TO: Jeff Hatch-Miller, Chairman
William A. Mundell
Mike Gleason
Kristin K. Mayes
Barry Wong

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

DATE: August 22, 2006

RE: Proposed Order for Relief and Consent to Same: Ameriprise Financial Services, Inc. Docket No. S-20427A-06-0526

CC: Brian C. McNeil, Executive Director

Attached is a proposed Order and Consent to Same ("Order") by Respondent Ameriprise Financial Services, Inc. ("Ameriprise"), a Minnesota-based national securities dealer registered in Arizona. This Order addresses weaknesses in Ameriprise's surveillance and compliance policies and procedures, which contributed to the firm's failure to discover a series of forgeries and misappropriations by one of its registered securities salesmen, who misappropriated approximately \$278,134.00 from seven customer accounts from 2000 through 2005.

In December 2005, Ameriprise voluntarily brought to the Securities Division's attention its internal investigation of Kenneth Duane Feldhacker ("Feldhacker"), which was initiated as a result of an Ameriprise customer service representative's discovery of a signature discrepancy on a redemption form in a customer's account. The matter was referred to Ameriprise's fraud unit for further investigation, and the Division was notified.

The Division's and Ameriprise's investigations revealed that on January 4, 2000, Feldhacker opened a joint brokerage account with a customer in violation of Ameriprise's policies and procedures, which prohibit joint accounts with customers unless there is a family relationship. In an effort to subvert Ameriprise's prohibitions on such joint accounts, Feldhacker had falsely indicated on the account application that he had a family relationship with the customer and indicated on the application that the address of record was Feldhacker's home address. The customer had no knowledge of the existence of the account. Over a five-

1200 WEST WASHINGTON, PHOENIX, ARIZONA 85007 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701

www.cc.state.az.us

\\NAENFORCE\CASES\Feldhacker.pjohnson\MEMOS\M E M O R A N D U M Ameriprise.doc

year period, from 2000 through 2005, Feldhacker initiated 93 fraudulent transfers to the unauthorized joint brokerage account, misappropriating approximately \$278,134.00 from seven customers.

In a previous Order, docketed on April 3, 2000, the Commission found that Ameriprise, formerly known as American Express Financial Advisors ("AEFA"), failed to reasonably supervise one of its Advisors in Arizona when the Advisor misappropriated funds from the brokerage accounts of an elderly customer during the time period of 1997 through 1999. In that case, the Advisor had forged the customer's name to transfer her funds from her brokerage accounts to an unauthorized joint bank account through 52 separate unauthorized redemptions, totaling \$226,000.00. In that previous Order, AEFA consented to pay \$125,000 in administrative penalties and to undertake remedial measures that were intended to raise "red flags" to prevent a recurrence of the same type of misconduct involving joint accounts.

In another recent Order, docketed on December 5, 2005, the Commission found that Ameriprise failed to reasonably supervise one of its Advisors in Arizona after the Advisor misappropriated approximately \$195,500.00 from the brokerage accounts of 23 customers, during the time period of 1996 through 2004. That Advisor had forged customers' names to investment advisory service agreements to initiate unauthorized redemptions for payment of fraudulent advice fees. Ameriprise consented to that Order, agreeing to pay administrative penalties of \$1,000,000, and to implement remedial measures to strengthen its compliance, surveillance, and supervisory systems, including quarterly reports to the Division summarizing remedial actions taken in response to this Order and customer complaints involving Arizona residents. In that case, Ameriprise also paid approximately \$475,000.00 to former customers of that Advisor, including full restitution and interest.

In this proposed Order, Ameriprise has agreed to pay administrative penalties of \$1,250,000, for failing to reasonably supervise Feldhacker, based upon findings that the firm, again, was on notice of potential violations but did not discover the misconduct in a timely manner. Ameriprise has also paid or offered to pay full restitution to all of Feldhacker's victims, including interest. Ameriprise has agreed to implement further additional remedial measures and compliance procedures outlined in this Order, and will address its implementation of those new surveillance tools and programs in its quarterly reports to the Division.

Ameriprise has fully cooperated in this investigation. The Division believes the proposed Order to be in the public interest, and a fair and equitable resolution of this matter.

Originated by: Pam Johnson

MJN/ptj

1
2
3 **BEFORE THE ARIZONA CORPORATION COMMISSION**

4 **COMMISSIONERS**

5 JEFF HATCH-MILLER, Chairman
6 WILLIAM A. MUNDELL
7 MIKE GLEASON
8 KRISTIN K. MAYES
9 BARRY WONG

10 In the matter of

11 AMERIPRISE FINANCIAL SERVICES,
12 INC.

13 Ameriprise Financial Center
14 707 Second Avenue South
15 Minneapolis, MN 55474

16 Respondent.

DOCKET NO. S-20427A-06-0526

DECISION NO. _____

**ORDER FOR RELIEF AND
CONSENT TO SAME**

17 Respondent AMERIPRISE FINANCIAL SERVICES, INC. ("Ameriprise") elects to
18 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
19 of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order For Relief and
20 Consent To Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation
21 Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of
22 Law contained in this Order; and consents to the entry of this Order by the Commission.

23 **I.**

24 **FINDINGS OF FACT**

25 1. Ameriprise was at all pertinent times a securities dealer registered with the
26 Commission. Ameriprise maintains corporate headquarters at 707 Second Avenue South,
Minneapolis, Minnesota, and maintains various branch office locations in Arizona.

2. In December 2005 and January 2006, Ameriprise voluntarily brought to the
Commission's attention an internal investigation that it initiated concerning an Arizona registered
securities salesman, Kenneth Duane Feldhacker ("Feldhacker").

3. Feldhacker was at all pertinent times a registered securities salesman in Arizona
since on or about February 9, 1988, CRD# 1801281, operating from a registered office in Mesa,

1 Arizona. At all times pertinent to this action, Feldhacker was registered in Arizona in association
2 with Ameriprise, from February 9, 1988 until January 23, 2006, when Ameriprise discharged
3 Feldhacker for violating company policy.

4 4. The Division's and Ameriprise's investigation of Feldhacker revealed that on
5 January 4, 2000, Feldhacker opened a joint brokerage account with a customer, in violation of
6 Ameriprise's policies and procedures. The customer had not authorized Feldhacker to establish the
7 joint brokerage account, and was not aware that the account had been established. In an effort to
8 subvert Ameriprise prohibitions on such joint accounts, Feldhacker had falsely indicated on the
9 account application that the customer was related to him as an "in-law," and indicated on the
10 application that the address of record was Feldhacker's home address.

11 5. From January 2000 through December 2005, Feldhacker withdrew funds from
12 seven customers' accounts without their knowledge or authority by forging their names on account
13 documents, including transfer forms and annuity surrender forms, or by using blank forms signed
14 by customers. Feldhacker initiated redemptions in customers' securities accounts and transferred
15 money from customers' mutual funds, variable and fixed annuities, and/or life insurance accounts
16 to the unauthorized joint brokerage account that he had fraudulently and in violation of Ameriprise
17 policy set up with an Ameriprise customer. Feldhacker withdrew and transferred the funds from
18 the joint brokerage account to his own bank account, and used the funds for his own personal use.

19 6. From January 2000, when Feldhacker first opened the joint account with the
20 customer, until December 2005, Feldhacker conducted approximately 93 fraudulent withdrawals
21 and transfers from seven customer accounts to the unauthorized joint account, each fraudulent
22 transfer ranging from approximately \$900.00 to \$18,474.00, totaling approximately \$278,134.00.

23 7. Ameriprise began an investigation of Feldhacker on December 9, 2005, when
24 Feldhacker submitted a new redemption and transfer request for one of the affected customers. In
25 processing the request, an Ameriprise service representative attempted to verify the signature on
26 the redemption request by comparing it with paperwork for prior transactions in the customer's

1 account and observed that the ostensible customer signature did not appear to match. The service
2 representative then reported the suspicious activity to Ameriprise investigators. After a preliminary
3 review, Ameriprise promptly informed the Division of the facts it had learned about Feldhacker's
4 activity and that the firm was commencing an investigation of Feldhacker.

5 8. Ameriprise attempted to interview Feldhacker on January 10, 2006, and when
6 Feldhacker terminated the interview Ameriprise immediately suspended Feldhacker. On January
7 18, Feldhacker voluntarily met again with Ameriprise investigators, and at that time admitted to
8 misappropriating client funds. On January 20, 2006, Ameriprise terminated Feldhacker for
9 violating numerous company compliance policies, including:

- 10 a) exercising discretionary power over clients' accounts;
- 11 b) forging clients' signatures on redemption forms without their knowledge or
12 authorization;
- 13 c) commingling client funds; and
- 14 d) using client funds that were transferred into an account that he controlled for
15 his own benefit.

16 **AMERIPRISE'S CONTROLS WERE INSUFFICIENT TO REASONABLY**
17 **PREVENT OR DETECT FELD HACKER'S MISCONDUCT**

18 9. At the time of Feldhacker's misconduct, Ameriprise had insufficient policies and
19 procedures in place to reasonably detect or prevent Feldhacker's fraudulent use of an unauthorized
20 joint account with an unrelated customer. In addition, Ameriprise's surveillance processes failed to
21 detect 93 fraudulent third-party transfers to Feldhacker's unauthorized joint account from unrelated
22 customer accounts, and Feldhacker's subsequent misappropriations from the unauthorized joint
23 account ostensibly owned by an Ameriprise customer. Those weaknesses in Ameriprise's
24 surveillance system contributed to Ameriprise's failure to discover Feldhacker's misconduct in a
25 timely manner.

1 10. Ameriprise's compliance policies and procedures prohibit its registered salesmen,
2 known by Ameriprise as "financial advisors," from having customers sign blank forms and prohibit
3 any joint account between a customer and a financial advisor, unless there is a family relationship.
4 Feldhacker misrepresented to Ameriprise that the customer was a relative at the time he opened the
5 account. Feldhacker's conduct was apparently designed to escape detection by the firm. At the
6 time of Feldhacker's misconduct Ameriprise did not have sufficient surveillance processes or other
7 controls to identify unauthorized advisor-owned joint accounts such as used by Feldhacker.

8 11. In April 2000, the Commission entered a prior Order against Ameriprise in Decision
9 No. 62430, relating to another financial advisor who used a joint bank account with a customer to
10 defraud the customer and misappropriate her funds (the "Elze Consent Order"). Pursuant to the
11 Elze Consent Order, Ameriprise was required to license and implement an "early warning"
12 software system to detect joint accounts owned by advisors. The system Ameriprise implemented
13 analyzes demographic data at the time an account is opened, as well as certain account status
14 changes such as changes of address. The system detects an exception, including a controlled
15 address circumstance, and generates an exception report which is reviewed by the firm's Fraud
16 Investigations unit, which may refer the matter to the firm's Compliance Department for further
17 investigation. The system was not designed to detect unauthorized joint accounts that were already
18 in existence at the time it was implemented. Feldhacker's unauthorized joint account was already
19 opened in January 2000, shortly before the system was installed and therefore was not discovered.
20 Ameriprise did not attempt any further investigation to determine whether there were any already
21 existing unauthorized joint accounts with customers. Such investigation could have revealed
22 Feldhacker's misrepresentation relating to the existence of a family relationship with the customer
23 on his account application, and may have prevented Feldhacker's misconduct between April 2000
24 and December 2005.

25 12. In response to the Feldhacker misconduct, Ameriprise has recently implemented a
26 process that will allow its soft-ware system to detect all unauthorized joint brokerage accounts.

1 13. Ameriprise was on notice of at least one prior incidence of forgery committed by
2 Feldhacker. In or around October 2000, one of Feldhacker's customers filed a complaint with the
3 National Association of Securities Dealers claiming that Feldhacker made unsuitable product
4 recommendations and purchased an annuity without her authorization in order to make
5 commissions and profit at her expense, subjecting her to costly surrender charges and taxes.
6 Ameriprise interviewed Feldhacker, who admitted that he had signed the customer's name on an
7 annuity application and on other documents in the customer's account on at least eight occasions, a
8 prohibited practice under Ameriprise's policies and procedures, and admitted selling the customer
9 a product that was not approved by Ameriprise, another practice prohibited by Ameriprise policy.
10 Ameriprise settled the claim with the customer in November 2001, and paid her \$81,200, but did
11 not take any disciplinary action against Feldhacker as a result of his misconduct until September
12 2003, nearly two years after settling the customer's claim. During the nearly three year period after
13 the customer filed her complaint until Ameriprise issued a Letter of Reprimand to Feldhacker,
14 Feldhacker used his fraudulent joint account to misappropriate \$155,400.00 from seven Ameriprise
15 customers. After Ameriprise disciplined Feldhacker for his admitted affixation of customer
16 signatures, the firm placed Feldhacker on a six-month heightened supervision action plan to
17 include random client file review and random client phone calls that began on September 12, 2003
18 and ended on March 1, 2004, charged him \$1,000.00 for the deductible cost of coverage under the
19 company's errors and omissions policy, and fined him \$2,000.00. During the six-month period of
20 his heightened supervision, Feldhacker misappropriated an additional \$17,000.00 in five
21 unauthorized transfers from three customer accounts to his joint account.

22 14. Today, under Ameriprise's zero-tolerance policy relating to forgery that was
23 implemented originally in March 2005, Feldhacker would have been terminated for that same
24 conduct, even if it were concluded that the forgeries were authorized by the client. However, the
25 firm did not detect Feldhacker's ongoing fraudulent activity because of the control gaps discussed
26 in paragraphs 9 through 13 of this Order.

AMERIPRISE'S REMEDIAL EFFORTS

1
2 15. In a prior Order of the Commission against Ameriprise for failure to reasonably
3 supervise, entered on December 5, 2005, in Decision No. 68316, Ameriprise had voluntarily
4 reported to the Division similar misconduct of an Arizona registered securities salesman involving
5 unauthorized withdrawals and redemptions from customer accounts through forged customer
6 signatures. That Order required Ameriprise to implement and report to the Division remedial
7 supervisory and compliance measures to eliminate fraud involving redemptions in customer
8 accounts, including measures focusing on the detection of "red flag" behavior (Decision at page 10,
9 par. 26(c)); and controls for preventing and discovering unauthorized redemptions and surrenders
10 from customer accounts (Decision at page 10, par. 26(d)). In compliance with that Order,
11 Ameriprise has provided quarterly reports to the Division regarding its remedial and enhancement
12 efforts. To date, Ameriprise has fully and diligently complied with the remedial requirements set
13 forth in the Commission's Decision No. 68316.

14 16. In light of control gaps identified by Ameriprise and the Division in relation to the
15 Feldhacker matter, Ameriprise has voluntarily committed to taking steps to address those gaps, and
16 has regularly reported to the Division on its progress in that regard.

17 17. Ameriprise has fully cooperated with the Division's investigation of this matter by:

18 a) Promptly bringing this matter to the attention of the Division and to
19 appropriate law enforcement authorities after discovering Feldhacker's misconduct.

20 b) Thoroughly investigating this matter, and fully sharing the results of its
21 investigation with the Division, including providing the Division with prompt and full access to
22 Ameriprise personnel and fully complying with requests for information from the Division.

23 c) Voluntarily working with the Division to identify weaknesses in its controls
24 and steps needed to improve its controls relevant to this matter, such that future occurrences of this
25 kind of misconduct are more likely to be prevented or detected.
26

1 d) Promptly interviewing and suspending Feldhacker; taking appropriate
2 disciplinary action by terminating his association with the firm.

3 e) Promptly identifying affected clients, notifying those clients, meeting
4 individually with those clients to apprise them of the matter, and voluntarily offering full restitution
5 to each of the affected clients.

6 18. In addition to the remedial measures that Ameriprise has initiated or agreed to initiate
7 and implement to its supervisory and compliance procedures in Decision No. 68316, since
8 December 2005, Ameriprise has implemented or started to implement the following changes in
9 policies and procedures:

10 a) Ameriprise has designed and implemented surveillance tools designed to
11 detect money transfers from client accounts to unaffiliated third parties.

12 b) Ameriprise has designed and implemented surveillance tools designed to
13 identify and track accounts held jointly between Advisors and clients. Suspicious accounts will be
14 identified and referred for further investigation.

15 c) Ameriprise has installed and implemented a surveillance program to track
16 insurance and annuity surrender charges to identify transactions in which clients pay fees for
17 withdrawal from insurance and annuity products. This will help identify fraudulent or otherwise
18 inappropriate transactions

19 **REMEDIAL MEASURES ORDERED**

20 19. AMERIPRISE has initiated or has agreed to initiate and implement additional
21 changes to its supervisory and compliance procedures, including:

22 a) During 2006, Ameriprise will fully implement surveillance processes for
23 monitoring client account transfers to unaffiliated third parties. Ameriprise will create and
24 implement written procedures designed to provide reasonable identification and
25 investigation of exceptions noted on this surveillance tool.
26

b) During 2006, Ameriprise will fully implement surveillance processes for identifying Ameriprise accounts owned jointly by Ameriprise advisors. Ameriprise will create and implement written procedures designed to provide reasonable identification and investigation of exceptions noted in this surveillance process.

c) Ameriprise will report to the Division on its progress in implementing these further enhancements in the quarterly reports to the Division pursuant to the Commission's Decision No. 68316.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. AMERIPRISE is under a duty to reasonably supervise its registered securities salesmen, pursuant to A.R.S. §§ 44-1961(A)(12).

3. AMERIPRISE was on notice of potential violations but did not discover misconduct in a timely manner and thereby failed to reasonably supervise pursuant to the provisions of A.R.S. § 44-1961(A)(12).

4. AMERIPRISE's conduct is grounds for administrative penalties under A.R.S. § 44-1961(B)(1).

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED that Respondent comply with the attached Consent to Entry of Order.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1961, that AMERIPRISE shall pay
2 administrative penalties in the amount of \$1,250,000. Payment shall be made in full by cashier's
3 check or money order on the date of this Order, payable to the "State of Arizona."

4 IT IS FURTHER ORDERED, that AMERIPRISE shall comply with the Remedial Measures
5 set forth in this Order.

6 IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the

7 ...

8 ...

9 ...

10 ...

11 ...

12 ...

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this _____ day of
_____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@cc.state.az.us.

(ptj)

CONSENT TO ENTRY OF ORDER

1
2 1. AMERIPRISE FINANCIAL SERVICES, INC. ("AMERIPRISE") admits the
3 jurisdiction of the Commission over the subject matter of this proceeding. AMERIPRISE
4 acknowledges that it has been fully advised of its right to a hearing to present evidence and call
5 witnesses and AMERIPRISE knowingly and voluntarily waives any and all rights to a hearing
6 before the Commission and all other rights otherwise available under Article 11 of the Securities
7 Act, and Title 14 of the Arizona Administrative Code. AMERIPRISE acknowledges that this
8 Final Order For Relief and Consent To Same ("Order") constitutes a valid final order of the
9 Commission.

10 2. AMERIPRISE knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. AMERIPRISE acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. AMERIPRISE neither admits nor denies the Findings of Fact and Conclusions of Law
16 contained in this Order.

17 5. By consenting to the entry of this Order, AMERIPRISE agrees not to take any action or
18 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
19 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
20 factual basis. AMERIPRISE will undertake steps necessary to assure that all of its agents and
21 employees understand and comply with this agreement.

22 6. While this Order settles this administrative matter between AMERIPRISE and the
23 Commission, and fully resolves, with respect to AMERIPRISE, all matters brought to the attention
24 of the Commission in the course of its investigation into this matter, AMERIPRISE understands
25 that this Order does not preclude the Commission from instituting other administrative proceedings
26 based on violations that are not addressed by this Order.

1 7. AMERIPRISE understands that this Order does not preclude the Commission from
2 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
3 that may be related to the matters addressed by this Order.

4 8. AMERIPRISE understands that this Order does not preclude any other agency or
5 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
6 proceedings that may be related to matters addressed by this Order.

7 9. AMERIPRISE agrees that it will continue to cooperate with the Securities Division
8 including, but not limited to, providing complete and accurate testimony at any hearing in this
9 matter and cooperating with the state of Arizona in any related investigation or any other matters
10 arising from the activities described in this Order.

11 10. AMERIPRISE agrees that it will make full restitution to any additional former clients
12 of Feldhacker who are found to have been victims of fraudulent conduct as described in this Order.

13 11. AMERIPRISE consents to the entry of this Order and agrees to be fully bound by its
14 terms and conditions, including undertaking and completing the Remedial Measures set forth in
15 the Order.

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

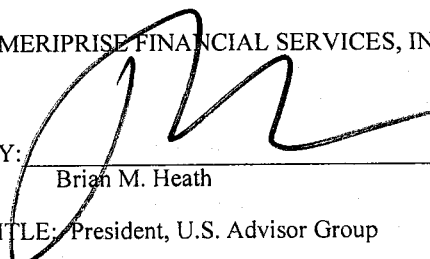
24 ...

25 ...

26 ...


1 12. Brian M. Heath represents that he is President of the U.S. Advisor Group of
2 AMERIPRISE and has been authorized by AMERIPRISE to enter into this Order for and on behalf
3 of it. Brian M. Heath represents that he is authorized by law to enter into this Order for and on
4 behalf of AMERIPRISE.

5 AMERIPRISE FINANCIAL SERVICES, INC.

6
7 BY: 
8 Brian M. Heath
9 TITLE: President, U.S. Advisor Group

10
11 State of Minnesota)
12 County of Hennepin)

13 SUBSCRIBED TO AND SWORN BEFORE me this 23rd day of August,
14 2006.

15 
16 NOTARY PUBLIC

17 My Commission Expires: 1-31-2011

